To the Legislature of The State of Ct.

Greetings to All:

I am Attorney Charles A. Maglieri, formerly a private solo practitioner of Law in Ct. doing business as "Advanced Bankruptcy Legal Services" having office locations in Bloomfield, Brooklyn, and Marlborough and limiting my legal practice since 1986 to Consumer Bankruptcy and Debtor Creditor Law. I was admitted to Ct. Bar in 1981 and have practiced Bankruptcy Law since that time. I am also admitted to the United States District Court for the District of CT, the United States Courts of Appeal, Second Circ. and the Supreme Court of the United States. I am also a current member of the Connecticut Bar Association, Commercial Law and Bankruptcy Section, National Association of Consumer Bankruptcy Attorneys, former member of Hartford County Bar Association and the National Association of Chapter Thirteen Trustees, and the American Bankruptcy Institute (ABI). Although I am semi-retired and now living full time in Venice, Florida I am still licensed in Ct. and I am employed as "Of Counsel" attorney with the Bankruptcy Law firm of Grafstein and Arcaro, LLC of New Britain and Bloomfield. I was asked to submit my thoughts on the pending legislation noted above; I do so from the perspective of being a Debtor's attorney over these many years.

From my perspective after having the benefit of decades of experience assisting client's both in the areas of Consumer Bankruptcy Law and State Law on Post-Judgment Remedies, it appears that the pending House Bill attempts to address a very complex situation that is sorely in need of reform. Specifically, I address the situation where a Judgment Creditor engages in post-judgment collection and targets the Judgment Debtor's bank savings or other financial accounts in which funds may exist to satisfy a debt either fully or in part. Executing on those funds by way of levy/seizure, garnishment and/or attachment squarely implicates the protections afforded a Judgment Debtor by way of Exempt Property that can't be reached by the Judgment Creditor. Of particular importance is the right of the Creditor to take cash deposits held in the Debtor's name which are not be deposited into **identified accounts** naming the source of the funds on deposit. Although the statute makes it clear that one can't attempt to collect from the *source of the funds* awarded/owed to the Debtor such as Social Security, Unemployment Benefits, Workers Compensation, and Public Assistance, qualified retirement accounts and Life Insurance Benefits, etc. it is very problematic for the Debtor to protect one's cash deposits that may be commingled with other sources of income, including the exempt portion of wages paid by the employer by direct deposit. The single $1000.00 Wild Card exemption that can be used for any property is frequently not effective to cover commingled cash funds on deposit that come from *protected sources* where all funds end up being deposited in a commingled account.

Further, we also have a Due Process problem with how a Debtor can claim one's exemptions in these accounts but doing so takes time to get to a court hearing all the while the Judgment Debtor faces a freeze on the funds for the amount owed although said funds may be completely exempt from creditor collection efforts. Pending Bill, H.B. 6372 attempts to address this situation by making certain protections be provided automatically or to state it another way ... to be "self-executing" all the while trying to balance the rights of the Judgment Creditor

to receive payment on a just debt and to also protect the property interests of the Judgment Debtor relative to one's exempt assets. How is this to be accomplished?

Obviously, it comes down to notice as to the nature of the funds held on deposit and how the Debtor can expeditiously claim the exemptions while not facing an automatic freeze on those assets protected by an exemption pending the court hearing. It seems to me that the financial institution which holds the funds is in a unique position to immediately assess the nature of the funds on deposit and to so notify both the Debtor about the legal process served on the bank and to likewise notify the Judgment Creditor as to whether said funds will be available to pay over to the Judgment Creditor. In order to do this while being fair to both the Judgment Debtor and Creditor is to place an administrative freeze on the account for a limited period of time to allow the bank to do an accounting as to the nature of the funds on hand. First, the bank determines the monthly total of all funds that are protected by exemptions by crediting the funds on hand to all allowed exempt deposits shown to have occurred; if the funds on deposit are less than that monthly total then all funds on hand should be automatically exempted and released to the Debtor after notice to the parties; this amount should include the $1000 Wild Card to be claimed against any funds on deposit which do not come from protected sources. By way of an example: Say there is $10,000.00 on deposit and from the banking records it is clear that the Judgment Debtor receives $5K from a pension, $2500 from Social Security, no wages, earned interest in the amount of $5.00 and no other specifically identified exempt funds. Accordingly, the Bank must allocate against the $10K on deposit first to the monies paid for the pension and the social security in the amount of $7500.00 and then subtracting the sum of $1000.00 for the Wild Card Exemption thus leaving the sum of $1500 for the Judgment Creditor. In this example, if the amount claimed is equal to or more than the remaining funds not found to be exempt then those funds are held and set aside for the creditor with no funds being released until such time as the court hearing is held. In the event the claim of the Judgment Creditor is less than the amount of the non-exempt funds then the claim amount is set aside as before with the remaining non-exempt funds added to the amount of the exempt funds which remain in the Judgment Debtor's account; the funds in the Judgment Debtor's Account are also frozen and can be accessed only by consent of the parties or until such time as the hearing is held.

However, to speed things up a bit, the Bank's analysis relative to the categorization of funds held on deposit will be set forth in a new official form called a *Notice Of Accounting* which is sent to both the Debtor and the Judgment Creditor asking if the parties agree with the analysis. If so, then the bank is authorized to release the *set aside funds* to the Judgment Creditor and to unfreeze the funds held in the Debtor's account. The new Notice will also state that the failure to object to the allocation within 10 days (or whatever number of days chosen) the bank will release the funds to the respective parties accordingly. However, should either party object to the accounting then a hearing is held **as soon as possible** and the bank retains all of the funds pending further order of the court except the sum of $1000.00 which can be immediately turned over to the Judgment Debtor. Further, in the event the bank determines that all funds on deposit are exempt from collection then the Accounting Notice shall so state and once again give notice that said funds will be released to the account holder unless an objection is filed

within a shorter period of time than that given where there are funds available for the creditor. Finally, a provision should be inserted in the statute that allows the bank to always exempt from the administrative freeze the sum of $1000 since that is a categorical exemption that is not relevant in any way to the source of the funds held in the commingled account.

It seems to me that providing the bank with the right to turn over funds to the Debtor without the consent of the parties or by further court order in an amount greater than $1000.00 would be a violation of Due Process; this protection must not be diluted in order to provide a self-executing process just to inject an element of "expediency" to assist the Judgment Debtor in getting access to protected funds in an amount greater than the sum of the $1000.00 Wild Card.

I hope this suggestion is somewhat helpful; thank you for the opportunity to be heard on this matter.

Respectfully submitted this 8th Day of February 2020 by:

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Of Counsel @ Grafstein and Arcaro, LLC